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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 UNIVERSAL CITY STUDIOS, INC.,)
15 Plaintiff,)
16 vs.)
17 RKO GENERAL, INC., et al.,)
18 Defendants.)

NO. CV 75-3526-R

19 RKO GENERAL, INC.,)
20 Counterclaimant,)
21 vs.)
22 UNIVERSAL CITY STUDIOS,)
23 Counterdefendant.)

COUNTERCLAIM OF DEFENDANT
DINO DE LAURENTIIS
CORPORATION

24 DINO DE LAURENTIIS CORPORATION,)
25 INC., a corporation,)
26 Counterclaimant,)
27 vs.)
28 UNIVERSAL CITY STUDIOS, INC.,)
29 a corporation,)
30 Counterdefendant.)

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1 Defendant Dino De Laurentiis Corporation, for itself and
2 no other party herein, counterclaims against plaintiff Universal
3 City Studios, Inc., as follows:
4

5 FIRST COUNT

6 (Infringement of Statutory Copyright)
7

8 1. This action arises under the Copyright Law of the
9 United States, Title 17 United States Code §§ 1 et seq. as a claim
10 for infringement and substantial and related claims for unfair
11 competition. Jurisdiction is conferred on this Court by Title 28
12 United States Code § 1338.
13

14 2. Defendant and counterclaimant Dino De Laurentiis
15 Corporation ("DDLDC") is a corporation duly organized and existing
16 under the laws of Delaware and is qualified to do and is doing
17 business in the County of Los Angeles, State of California. At all
18 times mentioned herein, DDLDC was and now is an independent motion
19 picture producer of major stature engaged in the financing, produc-
20 tion, and distribution of theatrical motion pictures. DDLDC has a
21 reputation in said industry for producing motion pictures of both
22 great quality and high profitability.
23

24 3. DDLDC is informed and believes and based thereon
25 alleges that plaintiff and counterdefendant Universal City Studios,
26 Inc. ("Universal") is a Delaware corporation qualified to do and
27 doing business in the State of California.
28

29 4. DDLDC is informed and believes and based thereon
30 alleges that RKO General, Inc. ("RKO"), a defendant and counter-
31 claimant in this action, is a Delaware corporation qualified to do
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1 and doing business in the State of California.
2

3 5. In the year 1933, RKO created and produced an orig-
4 inal motion picture photoplay entitled "King Kong" ("the original
5 photoplay"). DDLC is informed and believes and on that basis
6 alleges that said original photoplay is wholly original with RKO
7 and is copyrightable subject matter under the laws of the United
8 States. Prior to May 9, 1975, RKO complied in all respects with
9 the Copyright Law of the United States and all other laws governing
10 copyrights and secured the exclusive rights and privileges in and
11 to the copyright of said original photoplay and applied for and
12 received from the Register of Copyrights a certificate of registra-
13 tion of a claim to copyright identified as No. L 3794 and, on
14 December 5, 1960, obtained a renewal copyright therein, identified
15 as No. R 267264.
16

17 6. At all times mentioned herein said original photo-
18 play, "King Kong," has been published either by RKO or under its
19 authority and license in conformity with the provisions of the
20 Copyright Law of the United States and all other laws governing
21 copyrights. At all times mentioned herein, and subject to the
22 exclusive license hereinafter set forth, RKO was and still is the
23 sole proprietor of all rights, title and interest in and to the
24 copyright of said original photoplay.
25

26 7. On or about May 9, 1975 DDLC reached an agreement
27 with RKO by which RKO sold and DDLC purchased the exclusive right
28 and license to copy, produce, sell, and distribute a remake of the
29 original photoplay, and to use the name, title, and character
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1 "Kong" or "King Kong" in connection with the production, advertis-
2 ing, and promotion of said remake. Pursuant to and as a part of
3 said license, DDLC obtained and still has the exclusive right to
4 copy the story and expression of the original photoplay in connec-
5 tion with said remake.
6

7 8. Pursuant to its said exclusive license, at all times
8 after May 9, 1975 DDLC has expended and continues to expend con-
9 siderable time and money to remake the original photoplay, utili-
10 zing the name, characters, story, and expression of said original
11 photoplay. At great expense, DDLC has hired a screenwriter, direc-
12 tors, and actors, has released major advertising and publicity, has
13 developed a screenplay, has made film tests, has traveled exten-
14 sively in surveying locations, and has developed "special effects,"
15 all with respect to said production.
16

17 9. At all times mentioned herein Universal knew and was
18 on notice of all of the matters stated in paragraphs 5 through 8
19 inclusive hereinabove.
20

21 10. DDLC is informed and believes and based thereon
22 alleges that after May 9, 1975 Universal caused to be written a
23 screenplay (the "Universal screenplay"), unlawfully copying and
24 infringing upon the copyrighted original photoplay, including its
25 story and expression. Universal has publicly announced its inten-
26 tion to produce, sell, and distribute a remake of the original
27 photoplay based upon said unlawrul screenplay.
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29 11. Universal's said unlawful acts as alleged herein-
30 above are causing and, unless enjoined and restrained by this
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1 Court, will continue to cause DDLC great and irreparable injury
2 which cannot be adequately compensated or measured in money. DDLC
3 has no adequate remedy at law. Pursuant to 17 U.S.C. § 101(a) and
4 § 112, DDLC is entitled to preliminary and permanent injunctions
5 restraining and enjoining Universal's infringement of copyright.
6

7 12. As a direct and proximate result of Universal's said
8 unlawful acts as alleged hereinabove, DDLC has suffered damages in
9 an amount which it cannot now ascertain. DDLC is informed and
10 believes, and based thereon alleges, that it has suffered such
11 damages in an amount of not less than \$40,000,000. Pursuant to
12 17 U.S.C. § 101(b) DDLC is entitled to recover from Universal such
13 damages as DDLC has suffered by reason of Universal's infringement
14 of copyright, as well as all profits which Universal may have or
15 shall derive as a result of said infringement. DDLC will seek
16 leave to amend this complaint to allege the specific amount of
17 such damages when such amount has been ascertained.
18

19 13. By virtue of Universal's said unlawful acts,
20 Universal has been guilty of oppression, fraud, and malice and
21 DDLC, in addition to its actual damages, is entitled by reason
22 thereof to recover \$50,000,000 in damages for the sake of example
23 and by way of punishing Universal.
24

25 14. Pursuant to 17 U.S.C. § 101(c) and § 101(d), DDLC
26 is entitled to an order of this Court requiring Universal to de-
27 liver up on oath to be impounded during the pendency of this action,
28 and to be destroyed upon such terms and conditions as this Court
29 may prescribe, all materials which infringe upon the copyright in
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1 the original photoplay "King Kong."
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4 15. Pursuant to 17 U.S.C. § 116, DDLC is entitled to
5 recover, in addition to all of its monetary recovery, its reason-
6 able attorneys' fees incurred in commencing and prosecuting this
7 counterclaim. DDLC has employed attorneys to represent it in this
8 action and has incurred and will incur in the future, expenses for
9 attorneys' fees and other costs in connection with this action.
10 DDLC will ask leave of this Court to amend this complaint to
11 allege the exact amount of said attorneys' fees, costs, and ex-
12 penses when said amount has been fully ascertained.

13
14 SECOND COUNT

15 (Unfair Competition)

16 . . .
17 16. DDLC refers to and herein incorporates by reference
18 each and every allegation contained in paragraphs 1 through 10 in-
19 clusive hereinabove.

20
21 17. At all times mentioned herein the reputation of the
22 original photoplay and the name and visual depiction of the char-
23 acter "Kong" or "King Kong" was and still is widely known by the
24 public both in the United States and abroad. At all times since
25 its original release in 1933 the original photoplay has been avail-
26 able for commercial public viewing, either in motion picture
27 theatres or on television, and has received and continues to re-
28 ceive considerable critical acclaim and financial success. DDLC is
29 informed and believes and based thereon alleges that at all times
30 since the original release of the original photoplay, RKO has

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1 regularly licensed the use of the title "King Kong" and the name
2 and visual depiction of "Kong" or "King Kong," for commercial
3 value, including licenses to plaintiff for two separate motion
4 pictures using the name, title, and character "King Kong" or "Kong."
5 As a result of said critical acclaim and widespread recognition,
6 the reputation of the original photoplay, including the public
7 recognition and good will attaching to it, the title "King Kong,"
8 and the name and visual depiction of the character "Kong" or "King
9 Kong" have acquired a secondary meaning of substantial commercial
10 value.

11
12 18. The Universal screenplay unlawfully appropriates
13 said title, reputation, name, and visual depiction. In addition,
14 Universal, in order to profit from said unlawful appropriation, has
15 publicly advertised and will in the future cause to be issued ad-
16 vertisements concerning its intention to produce, under its own
17 name, a remake of the original photoplay. Each said advertisement
18 and press release either visually depicts the character "King
19 Kong" or "Kong" or refers to that title, name, or character.
20 Universal has thereby appropriated, continues to appropriate, and
21 will in the future appropriate the name, title, visual depiction,
22 reputation, public recognition, and good will accorded the original
23 photoplay and the fruit of RKO's work, expenditures, skills, ex-
24 perience, and knowledge, all of which are the exclusive property
25 of DDLC by virtue of the license described in paragraph 7 above.
26 Universal has paid nothing and its said unlawful appropriation
27 is without any license, consent, or authority from DDLC or RKO or
28 any other person who may lawfully give such license, consent, or
29 authority.

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1 19. The Universal screenplay and Universal's said ad-
2 vertisements and press releases are calculated, designed, intended,
3 and do cause confusion as to the identity and content of both the
4 original photoplay and the remake now in production by DDLC and as
5 to the ownership of the name, visual depiction of the character
6 "Kong" or "King Kong," and the reputation, public recognition, and
7 good will accorded the original photoplay. Said advertisements
8 and press releases unlawfully and wrongfully use and trade upon
9 said name, and visual depiction, reputation, public recognition,
10 and good will, and constitute a wrongful, unlawful, unjust, and
11 unconscionable appropriation and taking by Universal for its own
12 use of said property.

13
14 20. The screenplay and photoplay which is now in produc-
15 tion by DDLC is of the highest quality and utilizes special effects
16 which have been developed and perfected at great expense to DDLC.

17
18 21. By virtue of Universal's said unlawful acts, Univer-
19 sal has or will unjustly enrich itself at the expense of DDLC.
20 Said acts defraud and cheat DDLC, constitute an appropriation and
21 invasion of DDLC's property rights, jeopardize the reputation of
22 DDLC as a producer of quality motion pictures, and constitute un-
23 fair competition with DDLC.

24
25 22. Universal's said unlawful acts as alleged hereinabove
26 are causing and, unless enjoined and restrained by this Court, will
27 continue to cause DDLC great and irreparable injury which cannot
28 be adequately compensated or measured in money. DDLC has no ade-
29 quate remedy at law.

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1 23. As a direct and proximate result of Universal's
2 unlawful acts as alleged hereinabove, DDLC has suffered damages
3 in an amount which it cannot now ascertain. DDLC is informed and
4 believes, and based thereon alleges, that it has suffered such
5 damages in an amount of not less than \$40,000,000. DDLC will seek
6 leave to amend this complaint to allege the specific amount of
7 such damages when such amount has been ascertained.
8

9 24. By virtue of Universal's said unlawful acts,
10 Universal has been guilty of oppression, fraud, and malice and
11 DDLC, in addition to its actual damages, is entitled by reason
12 thereof to recover \$50,000,000 in damages for the sake of example
13 and by way of punishing Universal.
14

15 THIRD COUNT

16 (Interference with Prospective Advantage)
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18 25. DDLC refers to and herein incorporates by reference
19 each and every allegation contained in paragraphs 1 through 10 in-
20 clusive and 17 through 20 inclusive hereinabove.
21

22 26. By reason of the license described in paragraph 7
23 above, DDLC is in a position to realize substantial future economic
24 benefits from distribution or sale of its remake of the original
25 photoplay. By virtue of Universal's unlawful acts as described
26 hereinabove, Universal is unlawfully interfering with the prospec-
27 tive business interests and advantages of DDLC.
28

29 27. As a direct and proximate result of Universal's said
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1 unlawful acts, DDLC will suffer damages in an amount which it can-
2 not now ascertain. DDLC is informed and believes and based thereon
3 alleges that it will suffer such damages in an amount of not less
4 than \$40,000,000. DDLC will seek leave to amend this complaint
5 to allege the specific amount of such damages when such amount has
6 been ascertained.

7
8 28. By virtue of Universal's said unlawful acts,
9 Universal has been guilty of oppression, fraud, and malice and
10 DDLC, in addition to its actual damages, is entitled by reason
11 thereof to recover \$50,000,000 in damages for the sake of example
12 and by way of punishing Universal.

13
14 FOURTH COUNT

15 (Constructive Trustee)

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17 29. DDLC refers to and herein incorporates by reference
18 each and every allegation contained in paragraphs 1 through 10
19 inclusive and paragraphs 17 through 20 inclusive hereinabove.

20
21 30. By virtue of Universal's said unlawful acts de-
22 scribed hereinabove, Universal will hold all proceeds which it will
23 receive, directly or indirectly, from the production, sale, and
24 distribution of the Universal photoplay as a constructive trustee
25 for the use and benefit of DDLC. DDLC requests the Court to de-
26 clare Universal such a constructive trustee and to order Universal
27 to convey any such proceeds to DDLC.

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1 WHEREFORE, counterclaimant DDLC prays for judgment
2 against counterdefendant Universal as follows:
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4 1. That Universal and its agents, servants, employees,
5 and all persons acting in concert with them, and each of them, be
6 enjoined and restrained, preliminarily and permanently, from in
7 any way infringing the copyright in the original motion picture
8 photoplay "King Kong" and
9

10 (a) From casting, filming, editing, recording,
11 financing, producing, or distributing for exhibition any motion
12 picture photoplay based upon the Universal screenplay;
13

14 (b) From building sets, developing special effects,
15 developing working models of the character "Kong" or "King Kong,"
16 and from using, filming, or employing in any way such sets, special
17 effects, or working models already built or developed;
18

19 (c) From casting, filming, editing, recording,
20 financing, producing, or distributing for exhibition any motion
21 picture photoplay utilizing or containing the character, title, or
22 story of "Kong" or "King Kong";
23

24 (d) From using the character, title, or name "Kong"
25 or "King Kong" in any motion picture or motion picture photoplay or
26 screenplay, or from advertising, publicizing, announcing, represent-
27 ing, or publicly stating in any fashion that it is making, or is
28 entitled to make, cast, film, edit, record, finance, produce, or
29 distribute for exhibition any motion picture photoplay utilizing
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1 or containing the character, title, or story of "Kong" or "King
2 Kong."

3
4 2. That this Court forthwith issue an order directing
5 counterdefendant Universal
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7 (a) To show cause why a preliminary injunction
8 should not be issued and granted so enjoining and restraining
9 counterdefendant Universal and its agents, servants, employees,
10 and all persons acting in concert with them, and each of them,
11 as set forth in the preceding paragraph 1, pending the hearing
12 and determination of this action, or further order of the Court,
13 and
14

15 (b) Further directing counterdefendant Universal
16 to deliver on oath during pendency of this action all materials
17 which infringe upon the copyright in the original motion picture
18 photoplay "King Kong";
19

20 3. That this Court issue an order directing destruction
21 of all materials delivered on oath by counterdefendant Universal
22 as infringing upon the copyright in the original motion picture
23 photoplay "King Kong";
24

25 4. For damages on the first, second, and third counts
26 herein in the amount of \$40,000,000 or according to proof;
27

28 5. For damages on the first, second, and third counts
29 herein in the amount of \$50,000,000, by way of punishing counter-
30 defendant Universal;
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1 6. That the Court declare that counterdefendant Univer-
2 sal holds or will hold all proceeds which it directly or indirectly
3 receives from the production, sale, or distribution of the Univer-
4 sal photoplay or any motion picture photoplay utilizing or contain-
5 ing the character, title, or story of "Kong" or "King Kong," as
6 constructive trustee for the use and benefit of counterclaimant
7 DDLC, and that said counterdefendant be ordered to convey said
8 proceeds to said counterclaimant;

9
10 7. For counterclaimant DDLC's costs of suit incurred
11 herein, together with its reasonable attorneys' fees as provided
12 by law; and

13
14 8. Such other and further relief as to the Court may
15 seem proper.

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17 MITCHELL, SILBERBERG & KNAPP
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20 By

21 
22 D. W. Hunt
23 Attorneys for Dino De Laurentiis
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